

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

TEDDY NICHOLS,
Plaintiff,

vs

Case No. C-1-02-045
(Beckwith, J.)

INDIANA MICHIGAN POWER (Hogan, M.J.)
COMPANY, et. al.,
Defendants.

ORDER

This matter is before the Court on Plaintiffs' Motion for Leave to File a Third Amended Complaint (Doc. 37). To date, Defendants have filed no response to said motion.

Fed. R. Civ. P. 15(a) provides that leave to amend "shall be freely given when justice so requires." In considering a motion for leave to amend, courts look at several factors; (1) undue delay in filing; (2) bad faith; (3) repeated failure to cure deficiencies by previous amendments; (4) undue prejudice to opposing party; and (5) futility of amendment. *Interroyal Corp. v. Sponseller*, 889 F.2d 109, 112 (6th Cir. 1989). Notice and substantial prejudice to the opposing party are critical factors in determining whether an amendment should be granted. *Hageman v. Signal L.P. Gas, Inc.*, 486 F. 2d 479, 484 (6th Cir. 1973). Defendants, by failing to oppose Plaintiff's motion, have not offered any argument with respect to the above referenced factors. Moreover, pursuant to Ohio S.D. Civ. R. 7.2(a)(2), "[f]ailure to file a memorandum in opposition may be cause for the Court to grant any Motion as filed"

As such, Plaintiffs' motion is hereby GRANTED. The Third Amended Complaint, which is attached to said motion, shall be deemed filed as of the date

of this Order.

IT IS THEREFORE ORDERED THAT:

- 1) Plaintiff's Motion for Leave to File a Third Amended Complaint (Doc. 37) be **GRANTED**. The Third Amended Complaint, which is attached to said motion, shall be deemed filed as of the date of this Order.

SO ORDERED.

Date: 1/8/04

s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge